

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of)

)
Application by Verizon New England Inc.,)
Bell Atlantic Communications, Inc.)
(d/b/a Verizon Long Distance), NYNEX)
Long Distance Company (d/b/a Verizon)
Enterprise Solutions), Verizon Global)
Networks Inc., and Verizon Select Services)
Inc., for Authorization To Provide)
In-Region, InterLATA Services)
in Vermont)

CC Docket No. 02-7

COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

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COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. opposes the above-captioned application of Verizon for authorization to provide in-region, interLATA services in Vermont.¹

The public interest requires that the application be denied unless the Commission is convinced that the local markets have been opened fully and irreversibly to competitive entry. In Sprint's view, this is not yet the case.

I. INTRODUCTION AND SUMMARY

A key purpose of the 1996 amendments to the Communications Act of 1934 (the Act) was to open the local market to competition. To that end, Congress envisioned three avenues of local entry: resale, use of incumbent LEC unbundled network elements and

¹ Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont, CC Docket No. 02-7 (filed January 17, 2002)(Application).

facilities-based competition; and it placed incumbent LECs in the rather unnatural role of assisting their would-be competitors by imposing the interconnection, resale, unbundling and collocation obligations of § 251(c).

To encourage the principal ILECs – the BOCs – to cooperate in this process, Congress enacted the “carrot” of § 271, giving the BOCs the right to enter the long distance market in-region once their local markets were truly open. The Commission recognized the importance of local market competition in one of the first applications it decided under this section.

Although Congress replaced the MFJ’s structural approach, Congress nonetheless acknowledged the principles underlying that approach that BOC entry into the long distance market would be anticompetitive unless the BOCs’ market power in the local market was first demonstrably eroded by eliminating barriers to local competition. *** In order to effectuate Congress’ intent, we must make certain that the BOCs have taken real, significant and irreversible steps to open their markets. We further note that Congress plainly realized that, in the absence of significant Commission rulemaking and enforcement, and incentives all directed at compelling incumbent LECs to share their economies of scale and scope with their rivals, it would be highly unlikely that competition would develop in local exchange and exchange access markets to any discernable degree.²

If the BOCs are allowed to enjoy the § 271 “carrot” before local competition is fully established, they will have little incentive to cooperate with competitive LECs thereafter, unless they are subject to continuing regulation. Successfully maintaining such a regulatory structure and adapting it to changes in technology will require significant on-going resources of both the Commission and interested parties, with, at best, uncertain

² Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543, ¶18 (1997) (Michigan Order).

results. It would be far preferable to withhold the § 271 “carrot” until local competition is sufficiently entrenched that competitive forces can supplant the intensive regulation and enforcement that otherwise would be required. Sprint does not believe that point has yet been reached in Vermont.

In its application, Verizon states that it “disagrees as a legal matter that the Commission may conduct any analysis of local competition in its public-interest inquiry. Under the terms of the Act, the public-interest inquiry should focus on the market to be entered: the long distance market.”³ The recent decision of the Court of Appeals for the District of Columbia concerning the FCC’s grant of SBC’s 271 application for long distance service in Kansas and Oklahoma, remanding the “price squeeze” issue,⁴ disproves Verizon’s interpretation of the Act. The appellants argued that the low volume of residential customers in these states and SBC’s pricing of UNEs and retail services, which does not provide enough margin to make competition profitable, are evidence of a “price squeeze” that is inconsistent with the public interest. In commenting on the Commission’s inadequate consideration of the appellants’ claim, the court stated: “Here, as the Act aims directly at stimulating competition, the public interest criterion may weigh more heavily towards addressing potential ‘price squeeze.’” *Id.* at [*15]. Clearly, the court considers the Act’s goal of “stimulating competition” to refer to competition in the local market, which is the market affected adversely by a “price squeeze,” not the

³ Application, page 75, footnote 64.

⁴ Joint Application by SBC for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd 6237 (2001), remanded, Sprint Communications Co. L.P. v. FCC, ___ F. 3d ___ (DC Cir. 2001), 2001 U.S. App. LEXIS 27292.

long distance market. Thus, it is appropriate to consider whether the dismal state of competition and the low volume of residential customers served by facilities-based competitors is in the public interest when evaluating a 271 application.

As shown below, the CLEC industry is in a state of crisis, and the RBOCs have failed to establish themselves outside their territory. In Vermont, residential competition has not been firmly established.

II. THE CLEC INDUSTRY IS IN A STATE OF CRISIS (PUBLIC INTEREST)

The past year has been marked by the bankruptcy of many of the CLECs that were in the vanguard of the industry: Covad, e-Spire, NorthPoint, Rhythms, Teligent, WinStar and Convergent, to name a few.⁵ Most recently, on November 16, 2001, Net2000 filed voluntary petitions for relief under Chapter 11 and agreed to sell substantially all of its assets to Cavalier Telephone,⁶ and on January 31, 2002, McLeodUSA filed for bankruptcy.⁷ It comes as no surprise that a Morgan Stanley analyst recently released a “dismal report” about the state of the CLEC industry,

⁵ For a more complete list of CLECs that have filed for bankruptcy, *see* Comments of Sprint Communications Company L.P., In the matter of Joint Application by BellSouth Corporation, Inc., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277, filed October 19, 2001, p. 6.

⁶ NET2000 Communications Inc (NTKK) Form 8-K, <http://biz.yahoo.com/e/011121/ntkk.html>.

⁷ McLeodUSA Press Room, “McLeodUSA Reaches Agreement with Bondholder Committee.” <http://www.mcleodusa.com/html/ir/singleStory.php3?pid=158&type=press>.

identifying several specific local carriers as likely candidates for formal restructuring.⁸

Faced with the expense and difficulty of building out local networks and with mounting losses, other CLECs have been forced to downsize. For example, XO Communications recently laid off 600 employees, approximately 8 percent of its workforce.⁹

Among the six CLECs that Verizon identifies as among those competing in Vermont, Adelphia Business Solutions is also in financial difficulty. On January 3, 2002, Adelphia Business Solutions announced that “it will not make the payment-in-kind dividend scheduled for January 15, 2002 on its 12 7/8% Senior Exchangeable Redeemable Preferred Stock (the “Preferred Stock”). Under the terms of the preferred stock, dividends will continue to accrue until paid.”¹⁰

With CLECs under these severe financial difficulties, investors have unambiguously indicated that they will remain wary of CLEC stocks until it becomes clearer “which CLECs will survive the carnage.”¹¹ Industry experts agree that when the

⁸Morgan Stanley: XO “Likely” to Restructure, Washtech.com, Brendan Barrett (October 9, 2001).

⁹XO Communications Lays Off 600; CLEC-Planet, Wayne Kawamoto (October 3, 2001).

¹⁰ “Adelphia Business Solutions, Inc. Suspends Payment-in-Kind Dividend on Preferred Stock,” http://www.adelphia.com/invest/pdf/abiz_preferred.pdf. See also, “Comm Daily® Notebook,” Communications Daily, January 7, 2002, pp. 6-7.

¹¹ Telecom Services – Local: Hoexter’s Broadband Bits, Merrill Lynch Capital markets, K. Hoexter, at *1 (June 18, 2001).

smoke clears from “the steady stream of Chapter 11 filings in the competitive telecom sector” only a few CLEC companies will remain.¹²

III. OUT OF REGION RBOCs HAVE FAILED TO COMPETE AGAINST FELLOW RBOCs (PUBLIC INTEREST)

Perhaps the best indicator of the state of local competition is the extent to which ILECs choose to compete with each other. ILECs not only know the local market, but they come equipped with the complex back-office systems needed to provide service efficiently and economically. It is telling, then, that despite earlier assertions to the contrary, the RBOCs have remained largely outside the local competition fray. Verizon does not identify any fellow RBOC as a competitor to it in Vermont. Qwest, SBC and BellSouth have failed to establish themselves as significant providers of local service outside their serving territories. If local competition were truly enabled, these RBOCs could have entered Vermont and other Verizon markets with bundles of local and long distance service. Perhaps Sprint’s experiences can shed some insight into why they have not done so.

Despite its extensive experience in the local markets as an incumbent LEC, Sprint has no significant CLEC operations today. On the contrary, Sprint has cut back significantly on its previously planned CLEC activities. Over one year ago, Sprint abandoned its local market entry via resale or UNE-P altogether. After efforts to establish local service in selected major markets in Georgia, New York, Texas and

¹² Telecom Services – Alternative Carriers: Competition Telecom, Morgan Stanley, Dean Witter, P. Kennedy, at *1 (June 19, 2001).

California, Sprint determined that entry through either of these means could not be profitable, even taking into account its ability to retain long distance customer accounts. In November 2000, Sprint stopped accepting new residential customers for local service in these markets. It no longer has any residential customers in either Georgia or New York, and only a few remain in California and Texas.

In October 2001, Sprint announced the discontinuance of its Sprint ION residential and business offerings. Sprint had viewed Sprint ION as a breakthrough, integrated offering that promised to give consumers a superior alternative to the local offerings of ILECs. However, after extensive testing, including commercial offering of the service in a number of states, Sprint determined that it could not economically justify continuation or expansion of the service.

Among the factors contributing to Sprint's decision to withdraw from the local market was the difficulty of obtaining the "last mile" facilities needed for the service from the RBOCs. No Bell Company has found it to be in its own interest to cooperate in establishing local competition. Thus, at every turn, there are lengthy delays, inadequate provision of service, and high prices.¹³

¹³ On January 23, 2002, following a two-year investigation, the New York State Public Service Commission (NY PSC) ordered Verizon to lower its UNE prices by as much as 40 percent to promote local competition. In announcing the reduction, Chairman Maureen O. Helmer stated: "Accurate pricing of wholesale service is absolutely critical to the development of facilities-based as well as unbundled network element-based competition in the local phone market. The wholesale price reductions approved today reflect a reasonable balancing of interests and should promote more choices and better pricing of local telephone service for both residential and business customers." Press Release, "Commission Votes to Reduce Verizon's Whole Rates, Significant Reductions Will Foster More Robust Competition and Lower Phone Rates," <http://www.dps.state.ny.us/fileroom/doc11086.pdf>. Given the significant reductions

Due to the delays and failure of the Bell Companies to provide service, as well as the regulatory and legislative uncertainties regarding the future availability of facilities, carriers have no assurance about the level of future rates or the availability of services and service elements. Making business decisions to expend massive amounts of capital is, in the face of such uncertainties, obviously very risky.

IV. RESIDENTIAL COMPETITION IN VERMONT HAS NOT BEEN FIRMLY ESTABLISHED (PUBLIC INTEREST)

As noted above, the Act allows competitors to enter the local market via three entry strategies: resale of the incumbent's network, the use of unbundled network elements, or interconnection to the incumbent's network by pure facilities-based providers, or some combination thereof. The Commission has found that all three means of entry should be available:

Congress did not explicitly or implicitly express a preference for one particular strategy, but rather sought to ensure that all procompetitive entry strategies are available. Our public interest analysis of a section 271 application, consequently, must include an assessment of whether all procompetitive entry strategies are available to new entrants.

Michigan 271 Order, ¶387. In discussing how it would evaluate whether all strategies are available, the Commission made clear that there should be competition in each means of providing competitive local service and to both business and residential customers:

The most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of

which the NY PSC has ordered, the level of Verizon's UNE prices in Vermont and the methodology used to derive such prices should be evaluated in light of the NY PSC decision to determine whether the UNE prices in Vermont warrant similar reductions.

arrangements (that is, through resale, unbundled elements, interconnection with the incumbent's network, or some combination thereof), in different geographic regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large).

Id. ¶391.

Although Verizon claims that meaningful competition exists, its argument is seriously flawed. In its application, Verizon states that there are “at least six competing carriers in Vermont ... that are providing service on a facilities basis, including through unbundled network element platforms.” Application at 7. Verizon estimates that competitors serve approximately 21,500 lines.¹⁴ Ms. Brown states that 15,900 of these lines, or 74 percent, are provided via resale. Id. ¶ 22. The lack of facilities-based service clearly indicates that these competing carriers are not willing to make a sizeable investment to serve this market.

Verizon's data also demonstrate that residential service in Vermont is sorely lacking. Ms. Brown identifies only 690 residential lines served by competitors, representing a paltry 0.2% of Verizon's 350,000 loops in Vermont. Id. ¶ 3. Of these 690 lines, competitors are serving only 60 lines through UNE platforms and only 290 lines “wholly or partially over facilities they have deployed themselves.” Id. ¶ 5. The 350 residential lines that are served by some form of facilities-based competition represent only 0.14% of the analog Residential Access Lines of incumbent local exchange carriers in the state of Vermont.¹⁵ Thus, competition for residential customers

¹⁴ Declaration of Paula L. Brown, “Local Competition in Vermont,” Application, Appendix A, Tab F, Table 1.

¹⁵ FCC, “Statistics of Communications Common Carriers,” 2000/2001 Edition, Table 2.4.

is miniscule, and competition in forms other than resale is negligible. This negligible amount of facilities-based competition in the residential market falls far short of demonstrating that local residential competition has been fully and irreversibly enabled; and, until it is, the public interest is not satisfied by giving Verizon the “carrot” of § 271 authority. Sprint acknowledges that Congress did not mandate a specific market share that must be achieved prior to granting § 271 authority, and that the Commission has repeatedly declined to adopt a level of market share that must be achieved.¹⁶ However, the Commission also has stated “that there may be situations where a new entrant may have a commercial presence that is so small that the new entrant cannot be said to be an actual commercial alternative to the BOC, and therefore, not a ‘competing provider.’” Michigan Order, ¶ 77 (footnote omitted). Vermont, with less than 0.2% of its residential lines provided by competitors using their own “facilities” (including UNE-P) certainly qualifies as one such “situation.” At some point, the level of competitive entry is so minimal that no one could reasonably conclude – or predict with any confidence – that local competition has been (or will be) truly and irreversibly enabled, and accordingly that a grant of § 271 authority would be consistent with the public interest. Sprint submits that such is the case in Vermont.

¹⁶ Joint Application by SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, CC Docket No. 01-194 (FCC 01-338) (released November 16, 2001), ¶ 126.

V. CONCLUSION

Because Verizon has failed to demonstrate that there is meaningful competition in Vermont, its application for § 271 relief should be denied.

Respectfully submitted,

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February 6, 2002

CERTIFICATE OF SERVICE

I, Sharon Kirby, do hereby certify that this 6th day of February 2002 copies of the Comments of Sprint Communications Company L.P. on the application by Verizon for Section 271 Authorization to Provide In-Region, InterLATA Service in the State of Vermont, CC Docket No. 02-7, will be delivered as indicated below to the following parties:

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